

APPEAL NO. 040127
FILED MARCH 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 4, 2003. The record closed on December 16, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 1st through 10th quarters. In his appeal, the claimant asserts error in that determination. In its response to the claimant's appeal, the respondent (carrier) argues that the claimant's appeal was untimely. In the alternative, the carrier urges affirmance.

DECISION

Affirmed.

Initially, we will consider the carrier's assertion that the claimant's appeal was not timely filed. Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001. Commission records indicate that the hearing officer's decision was mailed to the claimant on December 19, 2003. Pursuant to Rule 102.5(d), the claimant was deemed to have received the hearing officer's decision on December 24, 2003. In accordance with amended Section 410.202, the appeal needed to be filed no later than January 20, 2004. The claimant mailed his appeal to the Commission on January 20, 2004, and it was received by the Commission on January 23, 2004. Thus, the appeal was timely.

The parties stipulated that the claimant sustained a compensable injury on _____; that he was assigned a 15% impairment rating for his compensable injury; that he did not commute his impairment income benefits; that the qualifying periods for the 1st through 10th quarters ran from January 10, 2001, to July 8, 2003; that the 1st through 10th quarters ran from April 24, 2001, to October 20, 2003; and that the claimant did not seek employment during the qualifying periods for the 1st through 10th quarters. Section 408.142(a) and Rule 130.102 set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by showing that he had a total inability to work during the qualifying periods for the 1st through 10th

quarters. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement of Rule 130.102(d)(4) by demonstrating that he had no ability to work in the relevant qualifying periods. The hearing officer was not persuaded that the evidence was sufficient to satisfy the requirements of Rule 130.102(d)(4). Specifically, the hearing officer determined that there was not a narrative that specifically explained how the claimant's injury caused a total inability to work in the qualifying periods. Nothing in our review of the record reveals that the hearing officer's determinations in that regard are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith determination, or the determination that the claimant is not entitled to SIBs for the 1st through 10th quarters, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge